



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[Document No. AMS-FV-10-0008-FR]

RIN 0581-AD00

**Christmas Tree Promotion, Research, and Information Order;
Referendum Procedures**

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for conducting a referendum to determine whether the continuation of the Christmas Promotion, Research, and Information Order (Order) is favored by domestic producers and importers of Christmas trees. This program will be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The 1996 Act allows for a referendum to be conducted up to three years after the effective date of the Order. The program will be continued if approved by a simple majority of the current eligible domestic producers and importers voting in the referendum. These procedures will also be used for any subsequent referendum under the Order. The Order is being published separately in this issue of the Federal Register.

EFFECTIVE DATE: [Insert date 30 days after the date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the
Commodity Promotion, research, and Information Act of 1996 (1996
Act) (7 U.S.C. 7411-7425).

As part of this rulemaking process, two proposed rules were
published in the **Federal Register** on November 8, 2010. One rule
pertained to the proposed Order (75 FR 68512) and a second rule
pertained to proposed referendum procedures (75 FR 68529). Both
rules provided for 60-day comment periods ending on February 7,
2011. No comments were received regarding the referendum
procedures. However, the comment period for the proposed order
was extended until March 9, 2011 (76 FR 9695). Five hundred and
sixty five comments were received regarding the proposed Order.
Those comments are addressed in another final rule published
earlier in the **Federal Register**.

Executive Order 12866

This rule has been determined to be not significant for
purposes of Executive Order 12866 and, therefore, has not been
reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the 1996 Act, a person subject to an order may file a petition with the Department (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law. In the petition, the person may request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a

complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

This final rule establishes procedures for conducting a referendum to determine whether the continuation of the Christmas Promotion, Research, and Information Order (Order) is favored by domestic producers and importers of Christmas trees. Domestic producers and importers can vote three years after the establishment of the program to determine if they favor the continuation of the program. This referendum will need to be approved by a simple majority of the eligible domestic producers and importers voting in the referendum. The proponents proposed that a referendum be held among domestic producers and importers three years after the first assessments begin to determine whether they favor continuation of the program. USDA will conduct the referendum. These procedures will also be used for any subsequent referendum under the Order.

The 1996 Act authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section

513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes Christmas trees.

The 1996 Act provides for alternatives within the terms of a variety of provisions. Paragraph (e) of section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) by a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order.

USDA received a proposal for a national research and promotion program for Christmas trees from the Christmas Tree Checkoff Task Force (Task Force). The program will be financed by an assessment on Christmas trees domestic producers and importers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The initial assessment rate will be \$0.15 per Christmas tree domestically produced or imported into the United States and could be increased up to \$0.20 per Christmas tree. The purpose

of the program will be to strengthen the position of fresh cut Christmas trees in the marketplace and maintain and expand markets for Christmas trees within the United States.

The Task Force proposed that a referendum be held among domestic producers and importers three years after the first assessments begin to determine whether they favor continuation of the program. The Task Force recommended that the program be continued if it is favored by a majority of the current domestic producers and importers voting in the referendum. Current domestic producers or importers who domestically produce or import more than 500 Christmas trees annually will be eligible to vote in the referendum.

Accordingly, this rule will add subpart B to part 1214 that will establish procedures for conducting the referendum. The procedures will cover definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information. The procedures will be applicable for the initial referendum and future referenda.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the final rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than \$7.0 million.

Under these criteria, the majority of the domestic producers that would be covered under this Order will be considered small entities, while most importers will not. Domestic producers and importers who produced or imported less than 500 Christmas trees annually will be exempt from the assessment. Organic domestic producers and importers are also expected to be exempt from assessments. The number of entities assessed under the program would be approximately 3,263. Estimated revenue is expected at \$2 million of which 10 percent is expected from imported product and 90 percent from domestic product.

According to the Task Force, based on data from the 2007 Census of Agriculture, there were approximately 12,255 Christmas tree farms that produced Christmas trees in the United States. Approximately 25 percent of the domestic producers or 3,100

Christmas tree domestic producers will be subject to the assessment based on the exemption of those producing less than 500 Christmas trees would be exempt from assessments. Approximately 95 percent of the domestic producers subject to the assessment qualified under the definition for small business owners. In 2008, there were approximately 175 importers. Based on the U.S. Customs data, 163 importers are subject to the assessment rate under the proposed Order.

This rule establishes procedures for conducting a referendum to determine whether domestic producers and importers favor continuation of a Christmas tree Order. USDA will conduct the referendum. The 1996 Act allows for a referendum to be conducted determining if domestic producers and importers favor the Order and also providing that a referendum be conducted up to three years after the effective date of the Proposed Order. Domestic producers and importers can vote three years after the establishment of the program to determine if they favor the continuation of the program. The procedures will also be used for any subsequent referendum under the Order. The procedures are authorized under paragraph (e) of section 518 the 1996 Act.

Regarding the economic impact of the Order on affected entities, domestic producers and importers of more than 500 Christmas trees annually will be required to pay assessments to

the Board. As previously mentioned, the initial assessment rate will be \$0.15 per Christmas tree domestically produced or imported to the United States and could be increased to no more than \$0.20 per Christmas tree. Voting in the referendum is optional. If current domestic producers and importers chose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want the program to become effective.

Regarding alternatives, USDA considered requiring eligible voters to vote in person at various USDA offices across the country. Conducting the referendum from one central location by mail ballot will be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

This action imposes an additional reporting burden on eligible domestic producers and importers of Christmas trees. Current eligible domestic producers and importers will have the opportunity to complete and submit a ballot to USDA indicating whether or not they favor continuation of the Order. The specific burden for the ballot is detailed later in this document in the section titled **Paperwork Reduction Act**. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been preapproved by OMB.

Title: Referendum for Christmas Tree Promotion, Research, and Information Program.

OMB Number: 0581-0267.

Expiration Date of Approval: 12/31/2013.

Type of Request: Approval of a preapproved collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for Christmas trees. The program will be financed by an assessment on Christmas tree domestic producers and importers and will be administered by a board of industry members selected by the Secretary. The program will provide an exemption for domestic producers and importers that domestically produce or import less than 500 Christmas trees annually. A referendum will be held among eligible domestic producers and importers to determine whether they favor continuation of the program. The purpose of the program will be to help build the market for fresh cut Christmas trees.

The information collection requirements in this rule concern the referendum that will be held to determine whether the program is favored by the industry. Current domestic producers and importers that domestically produce or import more than 500 Christmas trees annually will be eligible to vote in the referendum. The ballot will be completed by eligible

current domestic producers and importers who want to indicate whether or not they support continuation of the program.

REFERENDUM BALLOT

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Domestic producers and importers.

Estimated Number of Respondents: 3,263 (3,100 domestic producers and 163 importers).

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 114.21 hours.

The ballot will be added to the other information collections approved under OMB No. 0581-0267.

An estimated 3,263 respondents would provide information to the Board (3,100 domestic producers and 163 importers). The estimated cost of providing the information to the Board by respondents will be \$3,768.93. This total has been estimated by multiplying 114.21 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

Request for Public Comment under the Paperwork Reduction Act

A proposed rule regarding the referendum procedures was published in the **Federal Register** on November 8, 2010 (75 FR 68529). Copies of the rule were made available by USDA through the Office of the Federal Register and were also made available via the Internet at www.regulations.gov. That rule provided for a 60-day comment period. No comments were received.

In the November 8, 2010, proposed rule, comments were also invited on the information collection requirements prescribed in the **Paperwork Reduction Act** section of this rule. Specifically, comments were solicited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas

in the United States for softwood lumber; (d) the accuracy of USDA's estimate of the number of domestic manufacturers and importers of softwood lumber that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. No comments were received regarding information collection.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Christmas trees, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations, is amended to read as follows:

PART 1214—CHRISTMAS TREES, PROMOTION, RESEARCH AND INFORMATION ORDER

1. The authority citation for part 1214 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Add subpart B to part 1214 to read as follows:

Subpart B—Referendum Procedures

Sec.

1214.100 General.

1214.101 Definitions.

1214.102 Voting.

1214.103 Instructions.

1214.104 Subagents.

1214.105 Ballots.

1214.106 Referendum report.

1214.107 Confidential information.

1214.108 OMB control number.

Subpart B—Referendum Procedures

§ 1214.100 General.

Referenda to determine whether eligible domestic producers and importers of Christmas trees favor the continuance, amendment, suspension, or termination of the Christmas Tree Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1214.101 Definitions.

(a) Administrator means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated

to act in the Administrator's stead.

(b) Customs means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

(c) Department means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) Eligible domestic producer means any person who domestically produces more than 500 Christmas trees annually in the United States, and who:

(1) Owns, or shares the ownership and risk of loss of the production of Christmas trees;

(2) Rents Christmas tree production land, facilities and/or equipment resulting in the ownership of all or a portion of the Christmas trees domestically produced;

(3) Owns Christmas tree production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Christmas trees domestically produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to domestically produce Christmas

trees who share the risk of loss and receive a share of the Christmas trees domestically produced. No other acquisition of legal title to Christmas trees shall be deemed to result in persons becoming eligible domestic producers.

(e) Eligible importer means any person importing more than 500 Christmas trees annually into the United States as a principal or as an agent, broker, or consignee of any person who domestically produces or handles Christmas trees outside of the United States for sale in the United States, and who is listed as the importer of record for such Christmas trees that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0604.91.00.20, 0604.91.00.40, and 0604.91.00.60 during the representative period. Importation occurs when Christmas trees originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Christmas trees immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Christmas trees from Customs when such Christmas trees are entered or withdrawn for consumption in the United States.

(f) Christmas tree means any tree of the coniferous species,

that is severed or cut from its roots and marketed as a Christmas tree for holiday use.

(g) Order means the Christmas Tree Promotion, Research, and Information Order.

(h) Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a Christmas tree farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(i) Referendum agent or agent means the individual or individuals designated by the Department to conduct the referendum.

(j) Representative period means the period designated by the Department.

(j) United States or U.S. means collectively the 50 states,

the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1214.102 Voting.

(a) Each eligible domestic producer and eligible importer of Christmas trees shall be entitled to cast only one ballot in the referendum. However, each domestic producer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to domestically produce Christmas trees, in which more than one of the parties is a domestic producer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate domestic producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the

Department.

(d) Eligible domestic producers or eligible importers may be asked to provide proof of sales or acreage as proof of eligibility to vote in any referendum.

§ 1214.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible domestic producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1214.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1214.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall

endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1214.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1214.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§1214.108 OMB control number

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581-0267.

Dated: November 1, 2011

David R. Shipman
Acting Administrator

Billing code 3410-02 P

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